IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

INS. APP.No. 31 OF 2003(A)

IC.12/1998 OF EMPLOYEES INSURANCE COURT, KOLLAM

APPELLANT/APPLICANT

SRI.S.RAMACHANDRA PILLAI, TC 9/1760,
SHANKER LANE, SASTHAMANGALAM, TRIVANDRUM.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.K.JOHN MATHAI
SMT.PRIYA KRISHNAMOORTHY

RESPONDENTS: OPPOSITE PARTIES

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1. REGIONAL DIRECTOR,
ESI CORPORATION, TRICHUR.

2. THE RECOVERY OFFICER,
ESI CORPORATION, TRICHUR.

BY ADV. SRI.T.P.M.IBRAHIM KHAN, SC, ESI CORPN.

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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INSURANCE APPEAL NO. 31 OF 2003

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DATED THIS, THE 31ST DAY OF JANUARY, 2007

J U D G M E N T

This is an appeal filed against the judgment of the Employees Insurance Court, Kollam, in I.C. No. 12/1998.

2. Appellant is the applicant in the Insurance Case. An application was filed by him for a declaration that the demand of Rs. 52,367.50 by the E.S.I. Corporation in their notice dated 22.4.1998 is illegal and void as it is time barred. According to the appellant, the amount demanded is towards arrears payable while he was holding the ownership of Kerala Pathrika Malayalam Daily, which was transferred to another person P. Balakrishna Pillai on 3.9.1980 and that all existing liabilities under the ownership of the applicant having thus transferred, he alone is liable to pay the pre-existing liabilities and that the claim made by the Corporation for a period of five years is barred by limitation. The Corporation, on the other hand contended that the present application is barred by the principle of res judicata, that the claim is not barred by the law of limitation and that the

Kerala Pathrika is covered under the provisions of the Act with effect from 9.8.1978 by clubbing it with M/s. Geetha Printers. Though this was challenged before the Insurance Court, Kollam, eventually, the same was dismissed for non prosecution and as such, the present application is barred res judicata.

3. The court below found that the present claim is barred by the principle of res judicata. Of course, the court below did not discuss as to what is the issue that was decided in the previous case without which it could not have been held that the issue is barred by the principle of res judicata. The fact remains that the earlier application was dismissed for non prosecution. If so there cannot be a decision on the merits after adjudication. As such the principle of res judicata will not apply. But even if it has to be held that it is not barred by the principle of res judicata, the matter need not be remanded for fresh disposal since no other materials are placed on record to substantiate the contention that two establishments could not have been clubbed together. The documents that were marked on the side of the applicants are Exts.A1 to A5 which are mere demand notices and declaration forms issued by the Corporation. No other evidence was adduced by the applicant, if at all there was any such contention that clubbing of two establishments was not possible. The burden to prove that

the establishments are different has not been discharged in this case by the applicant.

As regards the limitation question is concerned, it is squarely covered by the decision of the apex court in **Employees State Insurance Corporation v. Santhakumar (** 2007(1) KLT 133(SC)). As such the finding of the court below that the prayer is barred by limitation is correct. It is found by the Tribunal that the liability for the period from 9.8.78 to 26.1.1980, being before the transfer of ownership, will not absolve the transferor from his liability. Further, as per Section 93 A of the Act, the applicant shall be continued to be liable in respect of such dues. Such a finding cannot be assailed and there is no valid reason to assail the said finding.

In the circumstances, I find no merit in this appeal. Dismissed.

P.R. RAMAN,
JUDGE.

knc/-